

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|   |   |                       |
|---|---|-----------------------|
| In the Matter of                                | ) |                       |
|   | ) |                       |
| Qwest Broadband Services, Inc.                  | ) | File No. EB-02-TS-215 |
|   | ) |                       |
| Operator of Cable System in:                    | ) |                       |
|   | ) |                       |
| Phoenix, AZ                                     | ) |                       |
|   | ) |                       |
| Request for Waiver of Section 11.61(a)(2)(i)(B) | ) |                       |
|   | ) |                       |
| of the Commission's Rules                       | ) |                       |

**ORDER**

**Adopted: June 28, 2002****Released: July 17, 2002**

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we grant Qwest Broadband Services, Inc. ("Qwest Broadband") a temporary, 12-month waiver of Section 11.61(a)(2)(i)(B) of the Commission's Rules ("Rules") for the VDSL cable television system. Section 11.61(a)(2)(i)(B) requires cable systems serving greater than 10,000 subscribers to broadcast the Emergency Alert System ("EAS") Weekly Required Test ("RWT") messages, at random days and times, on all programmed channels.<sup>1</sup>

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.<sup>2</sup> In 1994, the Commission adopted rules requiring cable systems to participate in EAS.<sup>3</sup> Cable systems serving greater than 10,000 subscribers are required to provide national level EAS messages on all programmed channels.<sup>4</sup>

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<sup>1</sup> 47 C.F.R. § 11.61(a)(2)(i)(B).

<sup>2</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations ...." 47 U.S.C. § 544(g).

<sup>3</sup> *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994) ("First Report and Order"), reconsideration granted in part, denied in part, 10 FCC Rcd 11494 (1995).

<sup>4</sup> *Id.* at 15516-15518.

3. Qwest Broadband filed a request for a temporary, 12-month waiver of Section 11.61(a)(2)(i)(B) on May 23, 2002. This waiver is requested for its Phoenix, Arizona VDSL cable system, as well as its Boulder, Colorado and Douglas County, Colorado systems if these systems reach 10,000 subscribers before June 30, 2003. In support of its waiver request, Qwest Broadband states that this is a VDSL cable system, the technology of which prevents the broadcast of EAS messages on all programmed channels simultaneously. Based on the switching system of the VDSL system, subscribers only receive a single channel at a time, and Qwest Broadband has not yet developed the technology to broadcast on all programmed channels simultaneously. In addition, Qwest Broadband submits that its subscribers will continue to have ready access to EAS information by a pop-up window that will direct them to the channel on which the EAS information is broadcast. In this regard, Qwest Broadband asserts that its subscribers currently have access to national EAS messages at the time of the broadcast. In addition, Qwest broadband indicates that it intends to pursue a permanent waiver to address this issue.

4. Based upon our review of the technical data and other information submitted by Qwest Broadband, we conclude that a temporary, 12-month waiver of Section 11.61(a)(2)(i)(B) for the VDSL system is warranted. We do not intend to grant further temporary waivers, extending beyond the current June 30, 2003 expiration date, unless it is related to an on-going proceeding in this matter. If Qwest Broadband intends to pursue a permanent waiver of Section 11.61(a)(2)(i)(B), it should do so expeditiously.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,<sup>5</sup> Qwest Broadband Services, Inc. **IS GRANTED** a waiver of Section 11.61(a)(2)(i)(B) of the Rules until June 30, 2003 for the VDSL cable television system.

6. **IT IS FURTHER ORDERED** that Qwest Broadband Services, Inc. place a copy of this waiver in its system file and post a copy of this waiver at the Qwest Broadband Services, Inc. Phoenix, as well as the Boulder/Douglas County systems in the case of these systems serving greater than 10,000 subscribers before June 30, 2003.

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Qwest Broadband Services, Inc., J. Brian DeBoice, Esq., Cohn and Marks LLP, 1920 N Street NW, Suite 300, Washington, DC 20036-1622.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Technical and Public Safety Division  
Enforcement Bureau

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<sup>5</sup> 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.